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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

FREEDOM FROM RELIGION)	
FOUNDATION, INC.,)	
P. O. Box 750)	
Madison, WI 53701,)	
Plaintiff,)	Cause No. CV12-19-m-DLB
vs.)	
CHIP WEBER, FLATHEAD NATIONAL)	RULE 26(f)
FOREST SUPERVISOR)	JOINT DISCOVERY PLAN
UNITED STATES FOREST SERVICE)	
650 Wolfpack Way)	
Kalispell, Montana 59901,)	
Defendant.)	

Plaintiff Freedom From Religion Foundation, Inc., by and through its counsel of record, and pursuant to Rule 26(f) Fed.R.Civ.P. and L.R. 26.1, hereby submits this discovery plan. Defendants (“Federal Defendants”), through counsel, was contacted regarding this plan. Federal

Defendants have indicated that they concur in this plan, subject to the specific qualifications noted below.

The parties understand that the permit-holder, the Knights of Columbus, has stated that it intends to move to intervene. The potential participation of that party and any related discovery issues are not addressed here.

Relative to the Rule 26(F) discovery plan items, the parties' views and proposals are:

A. What changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made.

Initial disclosures will be made by June 5, 2012. For the Federal Defendants, initial disclosures will consist of the administrative record, which the Federal Defendants plan to file by June 5, 2012. The Federal Defendants further maintain that because this action is reviewable on the administrative record, under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, the initial disclosure requirements are inapplicable, pursuant to Fed. R. Civ. P. 26(a)(1)(B)(i). The plaintiff does not agree that actions to determine Establishment Clause violations are limited to review and discovery under the APA.

B. The subjects on which discovery will be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited or focused to particular issues.

The Plaintiff plans to seek discovery relating to the history and decisions to allow placement of a statue of Jesus Christ on Federal land. The Federal Defendants believe that review of the agency's decision is limited to the administrative record under the APA and therefore would oppose discovery on that question going beyond the record, particularly discovery of agency decision-makers. However, the Federal Defendants believe that discovery on standing may be appropriate and, potentially, discovery concerning the historical and current

setting of the statue, public use of the area around the statue, and similar matters. The parties propose that all discovery be completed by December 1, 2012. No bifurcation of discovery between liability and damages is necessary.

C. Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.

The parties are aware of no issues regarding electronic discovery, at this time.

D. Any issues about claims of privilege or of protection as trial-preparation materials, including--if the parties agree on a procedure to assert these claims after production--whether to ask the court to include their agreement in an order.

The parties are aware of no specific issues regarding claims of privilege or trial-preparation materials, at this time. If discovery beyond the administrative record is allowed, the Federal Defendants anticipate that some otherwise relevant documents may be withheld on grounds of attorney-client or other applicable privilege, but the parties do not yet know if any such issues will arise.

E. What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or by the local rules, and what other limitations should be imposed.

The parties are not aware of any necessary or requested changes that need to be made to the discovery rules.

F. Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

The parties are not aware of any other orders that need to be issued at this time.

G. The parties believe that discovery and motions should be completed within approximately six (6) months of the preliminary pretrial conference. The parties suggest the following dates:

1. On or before October 1, 2012: The parties shall simultaneously disclose all liability experts, if any. Plaintiff does not seek damages, thereby obviating any disclosure

dates for damage experts. Expert disclosures shall comply with Fed. R. Civ. P 26(a)(2)(B), on or before the above deadline.

2. On December 1, 2012: Discovery closes. All discovery shall be completed by this date.

3. Deadlines for filing and briefing pretrial motions shall be established by the Court. pretrial motions shall be filed and fully briefed by the parties by this date.

Dated this 29th day of May, 2012.

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2012, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification electronically to all attorneys of record.

/s/Rosalie G. Stapleton
Rosalie G. Stapleton

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